IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 572 OF 2006

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S.C. Khati, Advocate for the petitioner.

CORAM : P.S. BRAHME, J.
29TH NOVEMBER, 2006

Heard Shri S.C. Khati, the learned Counsel appearing on behalf of the petitioner.

This petition is being disposed of at the stage of admission having regard to the question that arises for consideration in this petition.

The petitioner is a complainant in Summary Criminal Complaint Case No. 43/2003 pending in the Court of JMFC, Court No.3, Nagpur. The criminal proceeding arises out of the dishonour of cheque issued by the respondents in favour of the complainant and the accusation against the respondent was that by dishonour of the cheque, the respondent has committed an offence under Section 138 of the Negotiable Instruments Act. It is the matter of record that while the criminal case is pending on behalf of the accused person gave application to the trial Court for sending the

cheque in question to Handwriting Expert for his opinion in respect of the signature on the cheque. That application was allowed and the cheque was sent to the Handwriting Expert for his examination and opinion. The learned Counsel pointed out that though the matter was kept pending, the accused did not furnish his specimen signatures as asked for by the Handwriting Expert. But, then the Handwriting Expert on examining the cheque forwarded his opinion as contained in "Annexure-D". It is necessary to reproduce the opinion.

Opinion:

> "Resultant upon a careful and thorough Examination of the documents, with the aid of scientific equipments, I am unable to express any definite opinion as regards the identity or otherwise of the Red Encircled Signatures marked as Exs Q-1 with the Exs marked as S-1, as the Later don't provide adequate common data and identifying features for scientific examination."

After this information was received, the matter proceeded in the trial Court. During the pendency of the matter, the respondent moved an application vide Exh. 63 (Annexure-E) seeking permission to examine the concerned officer (Handwriting Expert), who gave

opinion, in the interest of justice. His application, however, came to be rejected by the Court by order dated 26.09.2006.

The grievance of the learned Counsel for the petitioner is about the observations of the Court in that order while rejecting the application. The trial Court observed thus :-

> "Q-1 is the signature on cheque and S-1 are the signature of the accused taken in Court by P.O. By naked eyes those signatures appear different."

The learned Counsel submitted that from the observations by the learned trial Court indicate that the trial Court is prejudged the authenticity of the signature of the respondent on the cheque. He further submitted that even that is so then that will cause prejudice to the complainant in his case. He, therefore, sought relief in the writ petition for expunging the observations made by the learned trial Court in the order which the Court has passed on 26.09.2006.

I have given considerable thoughts to the submissions of the learned Counsel for the petitioner. Having regard to the purpose for which the learned Counsel is seeking for expunging the observations and the controversy involved in this matter over the

signature on the cheque, I feel that the petition could be disposed of with the direction to the learned trial Court to decide the matter on its own merit without being influenced by his observations in the order dated 26.09.2006. It is pertinent to note that the Handwriting Expert as could be seen from the opinion which he has given could not give definite opinion because the respondent failed to submit his specific signature though asked for by the Handwriting Expert. Therefore, it is necessary in the interest of justice that the learned trial Court should decide the controversy independently on the basis of the material on record so also the evidence without being influenced by his own observation in the order. So the petition is disposed with direction that the learned trial Court shall decide the complaint on its own merit and on the basis of the evidence that would be led by the parties without being influenced by the observations made by the learned trial Court in his order dated 26.09.2006. The petition stands disposed of accordingly.

JUDGE

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